



STATE OF ARKANSAS
**Department of Finance
and Administration**

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September 16, 2014

Mr. James Dunham
Attorney at Law
Dunham & Faught, P.A.
P.O. Box 1083
Russellville, AR 72811-1083

RE: Advisory Opinion No. 2015-01

Dear Mr. Dunham:

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. § 19-11-715(b), concerning your service as a public defender for the State of Arkansas. This opinion is based upon the following facts that have been presented to me. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

- (1) You are an attorney engaged in the private practice of law. You also work as a part-time employee with the Arkansas Public Defender Commission.
- (2) This dual arrangement is permitted by state law, Ark. Code Ann. §§ 16-87-303 and 304.
- (3) You operate the public defender's office for Pope County out of your private law firm's office space.
- (4) In addition to the pay and benefits you receive from the State from your employment with the commission, you also receive payments from Pope County for rent and expenses for running the public defender's office for the county under Ark. Code Ann. § 16-87-302.
- (5) These rent and expense payments are appropriated by the Pope County Quorum Court as part of its annual operating budget.
- (6) You state that you are not a Pope County employee or a member of its Quorum Court and that you played no role in the consideration or authorization of the county's annual budget or its public defender's office line item.
- (7) You have asked for advisory opinions as to the propriety of these actions under two Arkansas statutes, Ark. Code Ann. §§ 19-11-705 and 21-8-304.

Your first question asked for an advisory opinion as to whether the payments you receive from Pope County violate Ark. Code Ann. § 21-8-304. I cannot advise you on this question. That section of the Arkansas code is under the authority of the Arkansas Ethics Commission, and I have no authority to render an opinion concerning laws under its jurisdiction. You will need to seek an opinion from the

Ethics Commission if you desire an answer to your first question.

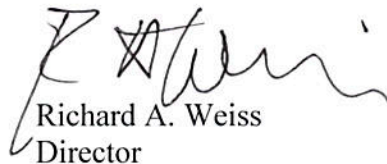
Your second question is whether the facts as you have presented them raise an impermissible conflict of interest under Ark. Code Ann. § 19-11-705. Section 19-11-715 of the code does authorize me to issue an opinion under that statute.

Act 483 of 1979, codified in part at Ark. Code Ann. § 19-11-701 et seq. ("the Act"), prohibits state agency contracts with a business in which an employee or an employee's immediate family member has a financial interest where the employee participates either directly or indirectly in the procurement of such contracts. *See* Ark. Code Ann. § 19-11-705(a)(1). "Direct or indirect participation" is defined at Ark. Code Ann. § 19-11-705(a)(2), and includes, but is not limited to, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and/or an employee's "participation" in the procurement process both directly and indirectly are examined on a case-by-case basis.

Based on the facts you have presented, I can find no conflict under the Act in this instance. Arkansas law clearly makes counties responsible for the "cost of facilities, equipment, supplies, and other office expenses necessary to the effective and efficient operation of the public defender's office" Ark. Code Ann. § 16-87-302(b). It appears, based on the documents you submitted, that the Quorum Court appropriated funds by line item for its public defender fund as required by the statute. Because you are not a county employee or a member of the Quorum Court, you would not be in a position to participate directly or indirectly in the consideration and authorization of such payments. As such, I do not see any conflict of interest under § 19-11-705.

This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and Executive Order 98-04.

Sincerely,



Richard A. Weiss
Director

cc: Camber Thompson, Office of State Procurement